

REFERENCE TITLE: elections; audit provisions

State of Arizona  
Senate  
Forty-ninth Legislature  
First Regular Session  
2009

# SB 1343

Introduced by  
Senator Paton; Representative Young Wright

AN ACT

AMENDING SECTIONS 16-445, 16-449, 16-602, 16-663 AND 16-664, ARIZONA REVISED  
STATUTES; RELATING TO CONDUCT OF ELECTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 16-445, Arizona Revised Statutes, is amended to read:

16-445. Filing of computer election programs with secretary of state

A. For any state, county, school district, special district, city or town election, including primary elections, utilizing vote tabulating devices as provided in this article, there shall be filed with the secretary of state at least ten days before the date of the election a copy of each computer program for each election. The secretary of state shall hold all computer program software filed pursuant to this section in escrow for three years. The secretary of state shall securely destroy the software filed pursuant to this section on the expiration of the three year period.

B. A copy of any subsequent revision of the computer program shall be filed in the same manner within forty-eight hours following the revision.

C. Any tape or disc used in the programming or operation of a vote tabulating device upon which votes are counted and any tape used in compiling vote totals shall be kept under lock and seal, and if there is a retally of votes, the officer entrusted with the tapes or discs shall submit his affidavit stating that they are the tapes or discs, or both, used in the election and have not been altered.

D. THE SECRETARY OF STATE OR OFFICER IN CHARGE OF ELECTIONS, AS APPLICABLE, SHALL PRODUCE AND RETAIN CENTRAL COUNT COMPUTER AUDIT LOGS AND DIRECTORY LISTINGS IMMEDIATELY BEFORE OFFICIAL ELECTION BALLOT COUNTING BEGINS AND AGAIN AFTER THE LAST BALLOT IS TABULATED. THE COUNTY OFFICER IN CHARGE OF ELECTIONS SHALL SUBMIT AN ELECTRONIC COPY OF THESE RECORDS TO THE SECRETARY OF STATE FOR RETENTION AND DESTRUCTION AS PRESCRIBED IN SUBSECTION A.

~~D.~~ E. All materials submitted to the secretary of state shall be used by the secretary of state or attorney general to preclude fraud or any unlawful act under the laws of this title and title 19 and, EXCEPT FOR THOSE MATERIALS PRESCRIBED BY SUBSECTION D, shall not be disclosed or used for any other purpose.

Sec. 2. Section 16-449, Arizona Revised Statutes, is amended to read:

16-449. Required test of equipment and programs; notice; procedures manual

A. Within the period of time before the election day prescribed by the secretary of state in the instructions and procedures manual adopted pursuant to section 16-452, the board of supervisors or other election officer in charge, or for an election involving state or federal candidates, the secretary of state, shall have the automatic tabulating equipment and programs tested to ascertain that the equipment and programs will correctly count the votes cast for all offices and on all measures AND SHALL VERIFY THAT ALL SOFTWARE AND FIRMWARE USED IN THE EQUIPMENT AND THE SYSTEM ARE VERSIONS THAT ARE CERTIFIED FOR USE BY THE SECRETARY OF STATE. Public notice

1 of the time and place of the test shall be given at least forty-eight hours  
2 prior thereto by publication once in one or more daily or weekly newspapers  
3 published in the town, city or village using such equipment, if a newspaper  
4 is published therein, otherwise in a newspaper of general circulation  
5 therein. The test shall be observed by at least two election inspectors, who  
6 shall not be of the same political party, and shall be open to  
7 representatives of the political parties, candidates, the press and the  
8 public. The test shall be conducted by processing a preaudited group of  
9 ballots so punched or marked as to record a predetermined number of valid  
10 votes for each candidate and on each measure and shall include for each  
11 office one or more ballots which have votes in excess of the number allowed  
12 by law in order to test the ability of the automatic tabulating equipment and  
13 programs to reject such votes.

14 B. If any error is detected, the cause therefor shall be ascertained  
15 and corrected and an errorless count shall be made before the automatic  
16 tabulating equipment and programs are approved. A copy of a revised program  
17 shall be filed with the secretary of state within forty-eight hours after the  
18 revision is made. If the error was created by automatic tabulating equipment  
19 malfunction, a report shall be filed with the secretary of state within  
20 forty-eight hours after the correction is made, stating the cause and the  
21 corrective action taken. The test shall be repeated immediately before the  
22 start of the official count of the ballots in the same manner as set forth  
23 above. After the completion of the count, the programs used and the ballots  
24 shall be sealed, retained and disposed of as provided for paper ballots.

25 ~~B.~~ C. Electronic ballot tabulating systems shall be tested for logic  
26 and accuracy within seven days before their use for early balloting pursuant  
27 to the instructions and procedures manual for electronic voting systems that  
28 is adopted by the secretary of state as prescribed by section 16-452. The  
29 instructions and procedures manual shall include procedures for the handling  
30 of ballots, the electronic scanning of ballots and any other matters  
31 necessary to ensure the maximum degree of correctness, impartiality and  
32 uniformity in the administration of an electronic ballot tabulating system.

33 D. ANY POLITICAL PARTY THAT IS ENTITLED TO CONTINUED REPRESENTATION ON  
34 THE BALLOT IN THE PRIMARY, GENERAL AND PRESIDENTIAL PREFERENCE ELECTIONS MAY  
35 CONDUCT ITS OWN TESTING USING BALLOTS MARKED BY THE PARTY REPRESENTATIVES.  
36 THE COUNTY POLITICAL PARTY CHAIRMAN OF A PARTY THAT CHOOSES TO CONDUCT ITS  
37 OWN TESTING SHALL NOTIFY THE COUNTY OFFICER IN CHARGE OF ELECTIONS IN WRITING  
38 NOT LATER THAN THIRTY DAYS BEFORE THE ELECTION. THE NOTICE SHALL INCLUDE THE  
39 NAMES OF THE PARTY REPRESENTATIVES WHO WILL CONDUCT THE TESTING. THE COUNTY  
40 OFFICER IN CHARGE OF ELECTIONS MAY REFUSE OR REMOVE FOR CAUSE THE DESIGNEE OF  
41 THE PARTY CHAIRMAN AND SHALL NOTIFY THE PARTY CHAIRMAN OF THE REFUSAL OR  
42 REMOVAL AS SOON AS IS PRACTICABLE TO ALLOW THE PARTY TO DESIGNATE AN  
43 ALTERNATE. POLITICAL PARTY TESTING SHALL BE CONDUCTED AS FOLLOWS:

44 1. EACH PARTY THAT IS ENTITLED TO CONTINUED REPRESENTATION ON THE  
45 BALLOT AND THAT CHOOSES TO CONDUCT ITS OWN TESTING SHALL RECEIVE ONE TEST

1 DECK OF BALLOTS. A TEST DECK SHALL CONSIST OF NOT MORE THAN TWO BALLOTS FROM  
 2 EVERY PRECINCT AND UP TO TEN ADDITIONAL BALLOTS PER PRECINCT FROM UP TO TEN  
 3 PER CENT OF THE PRECINCTS OR SEVENTY-FIVE PRECINCTS, WHICHEVER IS LESS, IN  
 4 THAT COUNTY. AT LEAST FOUR PRECINCTS SHALL BE TESTED IF THERE ARE FEWER THAN  
 5 FORTY PRECINCTS IN THE JURISDICTION. THE TEST DECK INCLUDING THE PRECINCTS  
 6 TO BE TESTED SHALL BE SELECTED BY THE PARTY REPRESENTATIVES. BALLOTS THAT  
 7 ARE USED AS PART OF A TEST DECK SHALL BE DISTINGUISHABLE FROM ALL OTHER TYPES  
 8 OF BALLOTS BY INCLUDING THE WORD "TEST" OR A SIMILAR LABEL IN A CONSPICUOUS  
 9 PLACE ON THE BALLOT.

10 2. POLITICAL PARTY REPRESENTATIVES MAY USE THEIR TEST BALLOTS TO TEST  
 11 THE PAPER-FED OPTICAL SCAN MACHINES, INCLUDING THE CENTRAL COUNT SCANNERS, OR  
 12 THE DIRECT RECORDING ELECTRONIC VOTING SYSTEMS, OR BOTH. THE SAME BALLOT MAY  
 13 BE USED TO TEST BOTH DEVICES. FOR TESTING THE DIRECT RECORDING SYSTEMS, THE  
 14 TEST BALLOT SHALL SERVE AS A TEMPLATE FOR MANUAL ENTRY OF BALLOT VOTE  
 15 SELECTIONS.

16 3. IN THE CASE OF A PRIMARY ELECTION OR PRESIDENTIAL PREFERENCE  
 17 ELECTION, A POLITICAL PARTY MAY TEST BALLOTS ONLY FROM ITS OWN PARTY.

18 4. ALL BALLOTS THAT ARE REQUESTED BY THE PARTY REPRESENTATIVES SHALL  
 19 REMAIN IN THE CUSTODY OF THE ELECTION OFFICIALS AND SHALL BE RETURNED TO THE  
 20 OFFICER IN CHARGE OF THE ELECTION ON COMPLETION OF THE TEST. ALL MARKING AND  
 21 TESTING OF BALLOTS BY PARTY REPRESENTATIVES SHALL OCCUR AT THE ELECTION  
 22 DEPARTMENT.

23 5. AT THE OPTION OF THE PARTY REPRESENTATIVE, THE ENTIRE TEST MAY BE  
 24 REPEATED USING THE SAME TEST DECK AFTER THE LAST OFFICIAL BALLOT IS  
 25 TABULATED, BUT BEFORE THE CANVASS IS APPROVED.

26 6. TESTING BY THE PARTY REPRESENTATIVES SHALL BE COMPLETED ON A  
 27 SCHEDULE AGREED TO BY THE PARTY REPRESENTATIVES AND THE OFFICER IN CHARGE OF  
 28 ELECTIONS. IF A SCHEDULE CANNOT BE AGREED TO, TESTING SHALL BE COMPLETED  
 29 BEFORE THE SECRETARY OF STATE'S OFFICIAL LOGIC AND ACCURACY TEST. THE  
 30 ELECTION SCHEDULE, INCLUDING THE LOGIC AND ACCURACY TESTING, SHALL NOT BE  
 31 MODIFIED TO ACCOMMODATE PARTY TESTING.

32 Sec. 3. Section 16-602, Arizona Revised Statutes, is amended to read:

33 16-602. Removal of ballots from ballot boxes; disposition of  
 34 ballots folded together or excessive ballots;  
 35 designated margin; hand counts; vote count  
 36 verification committee; definitions

37 A. The ballots cast in the election shall first be removed from the  
 38 ballot box and counted without being opened, except as may be necessary to  
 39 ascertain that the number of ballots cast corresponds with the number of  
 40 names on the poll lists. For any primary or general election in which the  
 41 votes are cast on an electronic voting machine or tabulator, the election  
 42 judge shall compare the number of votes cast as indicated on the machine or  
 43 tabulator with the number of votes cast as indicated on the poll list and the  
 44 number of provisional ballots cast, and that information shall be noted in a

1 written report prepared and submitted to the officer in charge of elections  
2 along with other tally reports.

3 B. If two or more ballots are found folded together appearing as a  
4 single ballot, they shall be laid aside until the count of the ballots is  
5 completed. If it then appears by comparison of the count with the number of  
6 names on the poll lists that the ballots thus folded together were cast by  
7 one elector, they shall be destroyed. If the ballots in the box are still  
8 found to exceed in number the names on the poll lists, the ballots, except  
9 those destroyed, shall be replaced in the box, and one of the judges, without  
10 looking in the box, shall draw therefrom, one at a time, and destroy  
11 unopened, a number of ballots equal to the excess, and the election board  
12 shall record on the poll lists the number of ballots so destroyed and shall  
13 then sign the poll list.

14 C. For each countywide primary, general and presidential preference  
15 election, the county officer in charge of the election shall conduct a hand  
16 count at ~~the central counting center~~ A SECURE FACILITY THAT IS SUBJECT TO THE  
17 VIDEO RECORDING REQUIREMENT PRESCRIBED IN SECTION 16-621. THE HAND COUNT  
18 SHALL BE CONDUCTED in the following order:

19 1. At least two per cent of the precincts in that county, or two  
20 precincts, whichever is greater, shall be selected at random from a pool  
21 consisting of every precinct in that county. The county political party  
22 chairman for each political party that is entitled to continued  
23 representation on the state ballot or the chairman's designee shall conduct  
24 the selection of the precincts to be hand counted. The precincts shall be  
25 selected by lot without the use of a computer, and the order of selection by  
26 the county political party chairmen shall also be by lot. The selection of  
27 the precincts shall not begin until all ballots voted in the precinct polling  
28 places have been delivered to the central counting center. The unofficial  
29 vote totals from all precincts shall be made public before selecting the  
30 precincts to be hand counted. Only the ballots cast in the polling places  
31 and ballots from direct recording electronic machines shall be included in  
32 the hand counts conducted pursuant to this section. Provisional ballots,  
33 conditional provisional ballots and write-in votes shall not be included in  
34 the hand counts, and the early ballots shall be grouped separately by the  
35 officer in charge of elections for purposes of a separate manual audit  
36 pursuant to subsection G of this section.

37 2. The races to be counted on the ballots from the precincts that were  
38 selected pursuant to paragraph 1 of this subsection for each primary and  
39 general election shall include up to five contested races. After the county  
40 recorder or other officer in charge of elections separates the primary  
41 ballots by political party, the races to be counted shall be determined by  
42 selecting by lot without the use of a computer from those ballots as follows:

43 (a) For a general election, one statewide ballot measure, unless there  
44 are no measures on the ballot.

45 (b) One contested statewide race for statewide office.

1 (c) One contested race for federal office, either United States senate  
2 or United States house of representatives. If the United States house of  
3 representatives race is selected, EACH PRECINCT'S BALLOTS THAT ARE SELECTED  
4 SHALL DETERMINE THE CONGRESSIONAL DISTRICT RACES THAT ARE COUNTED AND the  
5 names of the candidates may vary among the sampled precincts.

6 (d) One contested race for state legislative office, either state  
7 house of representatives or state senate. In either case, EACH PRECINCT'S  
8 BALLOTS THAT ARE SELECTED SHALL DETERMINE THE LEGISLATIVE RACES THAT ARE  
9 COUNTED AND the names of the candidates may vary among the sampled precincts.

10 (e) If there are fewer than four contested races resulting from the  
11 selections made pursuant to subdivisions (a) through (d) and if there are  
12 additional contested federal, statewide or legislative races or ballot  
13 measures, additional contested races shall be selected by lot not using a  
14 computer until four races have been selected or until no additional contested  
15 federal, statewide or legislative races or ballot measures are available for  
16 selection.

17 (f) If there are no contested races as prescribed by this paragraph, a  
18 hand count shall not be conducted for that precinct for that election.

19 3. For the presidential preference election, select by lot two per  
20 cent of the polling places designated and used pursuant to section 16-248 and  
21 perform the hand count of those ballots. THIS HAND COUNT SHALL BE CONDUCTED  
22 FOR ALL CANDIDATES WITHOUT REGARD TO THE CANDIDATES' POLITICAL AFFILIATION.

23 4. For the purposes of this section, a write-in candidacy in a race  
24 does not constitute a contested race.

25 5. In elections in which there are candidates for president, the  
26 presidential race shall be added to the four categories of hand counted  
27 races.

28 6. Each county chairman of a political party that is entitled to  
29 continued representation on the state ballot or the chairman's designee shall  
30 select by lot the individual races to be hand counted pursuant to this  
31 section.

32 7. The county chairman of each political party shall designate and  
33 provide the number of election board members as designated by the county  
34 officer in charge of elections who shall perform the hand count under the  
35 supervision of the county officer in charge of elections. For each precinct  
36 that is to be audited, the county chairmen shall designate at least two board  
37 workers who are registered members of any or no political party to assist  
38 with the audit. Any qualified elector from this state may be a board worker  
39 without regard to party designation. The county election officer shall  
40 provide for compensation for those board workers, not to include travel, meal  
41 or lodging expenses. If there are less than two persons for each audited  
42 precinct available to participate on behalf of each recognized political  
43 party, the recorder or officer in charge of elections, with the approval of  
44 at least two county party chairpersons in the county in which the shortfall  
45 occurs, shall substitute additional individual electors who are provided by

1 any political party from anywhere in the state without regard to party  
2 designation to conduct the hand count. A county party chairman shall approve  
3 only those substitute electors who are provided by the county chairman's  
4 political party. The political parties shall provide to the recorder or  
5 officer in charge of elections in writing the names of those persons  
6 intending to participate in the hand count at the audited precincts not later  
7 than 5:00 p.m. on the Tuesday preceding the election. If the total number of  
8 board workers provided by all parties is less than four times the number of  
9 precincts to be audited, the recorder or officer in charge of elections shall  
10 notify the parties of the shortage by 9:00 a.m. on the Wednesday preceding  
11 the election. The hand count shall not proceed unless the political parties  
12 provide the recorder or officer in charge of elections, in writing, a  
13 sufficient number of persons by 5:00 p.m. on the Thursday preceding the  
14 election and a sufficient number of persons, pursuant to this paragraph,  
15 arrive to perform the hand count. The recorder or officer in charge of  
16 elections may prohibit persons from participating in the hand count if they  
17 are taking actions to disrupt the count or are unable to perform the duties  
18 as assigned. For the hand count to proceed, no more than seventy-five per  
19 cent of the persons performing the hand count shall be from the same  
20 political party.

21 8. If a political party is not represented by a designated chairperson  
22 within a county, the state chairperson for that political party, or a person  
23 designated by the state chairperson, may perform the actions required by the  
24 county chairperson as specified in this section.

25 D. ABSOLUTE DIFFERENCES BETWEEN THE MANUAL AND ELECTRONIC COUNTS SHALL  
26 BE COMPUTED FOR EACH SELECTED RACE. WHEN CONGRESSIONAL OR LEGISLATIVE RACES  
27 ARE HAND COUNTED, ABSOLUTE DIFFERENCES SHALL BE COMPUTED SEPARATELY FOR EACH  
28 DISTRICT. If the randomly selected races result in a difference in any race  
29 that is less than the designated margin when compared to the electronic  
30 tabulation of those same ballots, the results of the electronic tabulation  
31 constitute the official count for that race. If the randomly selected races  
32 result in a difference in any race that is equal to or greater than the  
33 designated margin when compared to the electronic tabulation of those same  
34 ballots, a second hand count of those same ballots and races shall be  
35 performed. If the second hand count results in a difference in any race that  
36 is less than the designated margin when compared to the electronic tabulation  
37 for those same ballots, the electronic tabulation constitutes the official  
38 count for that race. If the second hand count results in a difference in any  
39 race that is equal to or greater than the designated margin when compared to  
40 the electronic tabulation for those same ballots, the hand count shall be  
41 expanded to include a total of twice the original number of randomly selected  
42 precincts. THE EXPANDED HAND COUNT RESULTS SHALL INCLUDE THE RESULTS FROM  
43 THE ORIGINAL HAND COUNT TOGETHER WITH THE RESULTS FROM THE ADDITIONAL  
44 PRECINCTS. Those additional precincts shall be selected by lot without the  
45 use of a computer.

1 E. In any expanded count of randomly selected precincts, if the  
 2 randomly selected precinct hand counts result in a difference in any race  
 3 that is equal to or greater than the designated margin when compared to the  
 4 electronic tabulation of those same ballots, the final hand count shall be  
 5 extended to include the entire jurisdiction for that race. If the  
 6 jurisdictional boundary for that race would include any portion of more than  
 7 one county, the final hand count shall not be extended into the precincts of  
 8 that race that are outside of the county that is conducting the expanded hand  
 9 count. If the expanded hand count results in a difference in that race that  
 10 is less than the designated margin when compared to the electronic tabulation  
 11 of those same ballots, the electronic tabulation constitutes the official  
 12 count for that race.

13 F. If a final hand count is performed for an entire jurisdiction for a  
 14 race, the final hand count shall be repeated for that race until ~~a hand count~~  
 15 ~~for that race for the entire jurisdiction results in a count that is~~  
 16 ~~identical to one other hand count for that race for the entire jurisdiction~~  
 17 ~~and that~~ TWO DIFFERENT HAND COUNTS RESULT IN THE SAME VOTE COUNTS TO WITHIN  
 18 THE DESIGNATED MARGINS ESTABLISHED BY THE VOTE COUNT VERIFICATION COMMITTEE  
 19 AND ALSO RESULT IN A CONSISTENT OUTCOME. THE FINAL hand count constitutes  
 20 the official count for that race.

21 G. ~~After~~ DURING the electronic tabulation of early ballots and at one  
 22 or more times selected by the ~~chairman~~ CHAIRMEN of the political parties  
 23 entitled to continued representation on the ballot or the ~~chairman's~~  
 24 CHAIRMEN'S designee, the chairmen or the chairmen's designees shall randomly  
 25 select one or more batches of early ballots ~~that have been~~ TO BE tabulated to  
 26 include at least one batch from each machine used for tabulating early  
 27 ballots, and those ballots shall be securely sequestered AFTER TABULATION by  
 28 the county recorder or officer in charge of elections along with their  
 29 unofficial tally reports for a postelection manual audit. A BATCH SHALL NOT  
 30 EXCEED FOUR HUNDRED BALLOTS. IN THE ALTERNATIVE, THE ELECTION OFFICIAL MAY  
 31 CHOOSE TO SORT THE EARLY BALLOTS BY PRECINCT AND HAND COUNT THE SAME  
 32 PRECINCTS THAT WERE SELECTED PURSUANT TO SUBSECTION C OF THIS SECTION. IF  
 33 THE BATCH METHOD IS SELECTED THE FOLLOWING APPLY:

34 1. The chairmen or the chairmen's designees shall randomly select from  
 35 those sequestered early ballots a number equal to ~~one~~ AT LEAST TWO per cent  
 36 of the total number of early ballots cast or ~~five~~ AT LEAST TEN thousand early  
 37 ballots, whichever is less.

38 2. From those randomly selected early ballots, the county officer in  
 39 charge of elections shall conduct a manual audit of the same races that are  
 40 being hand counted pursuant to subsection C of this section. If the manual  
 41 audit of the early ballots results in a difference in any race that is equal  
 42 to or greater than the designated margin when compared to the electronically  
 43 tabulated results for those same early ballots, the manual audit shall be  
 44 repeated for those same early ballots. If the second manual audit results in  
 45 a difference in that race that is equal to or greater than the designated



margin when compared to the electronically tabulated results for those same early ballots, the manual audit shall be expanded only for that race to a number of additional early ballots equal to ~~one per cent of the total early ballots cast or an additional five thousand ballots, whichever is less~~ OR GREATER THAN THE NUMBER USED IN THE FIRST HAND COUNT, to be randomly selected from the batch or batches of sequestered early ballots. THE EXPANDED AUDIT SHALL INCLUDE THE BALLOTS USED IN THE ORIGINAL HAND COUNT TOGETHER WITH THE ADDITIONAL BALLOTS. If the expanded early ballot manual audit results in a difference for that race that is equal to or greater than the designated margin ~~when compared to any of the earlier manual counts for that race, the manual counts shall be repeated for that race until a manual count results in a difference in that race that is less than the designated margin. If at any point in the manual audit of early ballots the difference between any manual count of early ballots is less than the designated margin when compared to the electronic tabulation of those ballots, the electronic tabulation shall be included in the canvass and no further manual audit of the early ballots shall be conducted,~~ THE FINAL EARLY BALLOT HAND COUNT SHALL BE EXTENDED TO INCLUDE THE ENTIRE JURISDICTION FOR THAT RACE. IF THE JURISDICTIONAL BOUNDARY FOR THAT RACE WOULD INCLUDE ANY PORTION OF MORE THAN ONE COUNTY, THE FINAL HAND COUNT SHALL NOT BE EXTENDED INTO PRECINCTS OF THAT RACE THAT ARE OUTSIDE OF THE COUNTY THAT IS CONDUCTING THE EXPANDED HAND COUNT. IF THE EXPANDED HAND COUNT RESULTS IN A DIFFERENCE IN THAT RACE THAT IS LESS THAN THE DESIGNATED MARGIN WHEN COMPARED TO THE ELECTRONIC TABULATION OF THOSE SAME BALLOTS, THE ELECTRONIC TABULATION CONSTITUTES THE OFFICIAL COUNT FOR THAT RACE.

H. During any hand count of early ballots, the county officer in charge of elections and election board workers shall attempt to determine the intent of the voter in casting the ballot.

I. Notwithstanding any other law, the county officer in charge of elections shall retain custody of the ballots for purposes of performing any required hand counts and the officer shall provide for security for those ballots.

J. The hand ~~counts~~ COUNTING OF BALLOTS prescribed by this section shall begin within twenty-four hours after the ~~closing of the polls~~ UNOFFICIAL EARLY AND POLLING PLACE VOTE TOTALS FROM ALL PRECINCTS HAVE BEEN MADE PUBLIC and shall be completed before the canvassing of the election for that county. THE SELECTION OF RACES AND PRECINCTS SHALL TAKE PLACE IMMEDIATELY BEFORE THE HAND COUNT. The results of those hand counts shall be provided to the secretary of state, who shall make those results publicly available on the secretary of state's ~~web-site~~ WEBSITE. THE REPORTED RESULTS SHALL INCLUDE THE HAND COUNTS AND ELECTRONIC COUNTS FOR BOTH POLLING PLACE AND EARLY BALLOTS FOR EACH PRECINCT OR BATCH AND FOR EACH CANDIDATE OR ISSUE.

K. For any county in which a hand count has been expanded to all precincts in the jurisdiction, the secretary of state shall make available the escrowed source code for that county to the superior court. The superior

1 court shall appoint a special master to review the computer software. The  
 2 special master shall have expertise in software engineering and shall not be  
 3 affiliated with an election software vendor nor with a candidate and shall  
 4 sign and be bound by a nondisclosure agreement regarding the source code  
 5 itself, and shall issue a public report to the court and to the secretary of  
 6 state regarding the special master's findings on the reasons for the  
 7 discrepancies. The secretary of state shall consider the reports for  
 8 purposes of reviewing the certification of that equipment and software for  
 9 use in this state.

10 L. The vote count verification committee is established in the office  
 11 of the secretary of state and all of the following apply:

12 1. At least thirty days before the 2006 primary election, the  
 13 secretary of state shall appoint seven persons to the committee, no more than  
 14 three of whom are members of the same political party.

15 2. Members of the committee shall have expertise in any two or more of  
 16 the areas of advanced mathematics, statistics, random selection methods,  
 17 systems operations or voting systems.

18 3. A person is not eligible to be a committee member if that person  
 19 has been affiliated with or received any income in the preceding five years  
 20 from any person or entity that provides election equipment or services in  
 21 this state.

22 4. The vote count verification committee shall meet and establish one  
 23 or more designated margins to be used in reviewing the hand counting of votes  
 24 as required pursuant to this section. The committee shall review and  
 25 consider revising the designated margins every two years for use in the  
 26 applicable elections. The committee shall provide the designated margins to  
 27 the secretary of state at least ten days before the primary election and at  
 28 least ten days before the general election, and the secretary of state shall  
 29 make that information publicly available on the secretary of state's ~~web-site~~  
 30 [WEBSITE](#).

31 5. Members of the vote count verification committee are not eligible  
 32 to receive compensation but are eligible for reimbursement of expenses  
 33 pursuant to title 38, chapter 4, article 2. The committee is a public body  
 34 and its meetings are subject to title 38, chapter 3, article 3.1 and its  
 35 reports and records are subject to title 39, chapter 1.

36 M. FOR THE PURPOSES OF THIS SECTION:

37 1. "CONSISTENT OUTCOME" MEANS RESULTING IN THE SAME OUTCOME BUT NOT  
 38 NECESSARILY RESULTING IN THE SAME VOTE COUNTS.

39 2. "OUTCOME" MEANS THE RESULTS OF AN ELECTION AS TO WINNERS AND LOSERS  
 40 BUT NOT INCLUDING THE VOTE COUNT.

41 Sec. 4. Section 16-663, Arizona Revised Statutes, is amended to read:

42 16-663. [Recount of votes; method](#)

43 A. The superior court to which the facts requiring a recount are  
 44 certified shall forthwith make and enter an order requiring a recount of the

1 votes cast for such office, measure or proposal. The recount shall be  
2 conducted in accordance with the laws pertaining to contests of elections.

3 B. When the court orders a recount of votes which were cast and  
4 tabulated on electronic voting equipment, such recount shall be pursuant to  
5 section 16-664. On completion of the recount, and for legislative, statewide  
6 and federal candidate races only, the county chairmen of the political  
7 parties entitled to continued representation on the ballot or the chairman's  
8 designee shall select at random without the use of a computer five per cent  
9 of the precincts for the recounted race for a hand count, ~~and~~ OF VOTES THAT  
10 WERE CAST AND TABULATED ON ELECTRONIC VOTING EQUIPMENT. IN ADDITION, FIVE  
11 PER CENT OF THE EARLY BALLOTS FOR THE RECOUNTED RACE THAT ARE SELECTED  
12 RANDOMLY SHALL BE HAND COUNTED USING THE BATCH METHOD ESTABLISHED IN SECTION  
13 16-602, SUBSECTION G. THE TOTALS FOR EARLY BALLOTS AND PRECINCT BALLOTS  
14 SHALL BE RECORDED SEPARATELY BUT SHALL BE COMBINED WHEN CALCULATING THE FINAL  
15 DIFFERENCE BETWEEN THE ELECTRONIC TABULATION AND THE HAND COUNT. If the  
16 results of that hand count when compared to the electronic tabulation of that  
17 same race are less than the designated margins calculated pursuant to section  
18 16-602, the recount is complete and the electronic tabulation is the official  
19 result. If the hand count results in a difference that is equal to or  
20 greater than the designated margin for that race, the procedure established  
21 in section 16-602, subsections D, E, F and G applies.

22 Sec. 5. Section 16-664, Arizona Revised Statutes, is amended to read:

23 16-664. Recount of votes by automatic tabulating system

24 A. In the event of a court-ordered recount of votes that were cast and  
25 tabulated on electronic voting equipment for a state primary, state general  
26 or state special election, the secretary of state shall order the ballots  
27 recounted on an automatic tabulating system to be furnished and programmed  
28 under the supervision of the secretary of state. In the event of a  
29 court-ordered recount for elections other than for the office of supervisor,  
30 the secretary of state may designate the county board of supervisors to  
31 perform the duties assigned to the secretary of state.

32 B. If the office of secretary of state is contested, the governor  
33 shall order the ballots recounted on an automatic tabulating system to be  
34 furnished and programmed under the supervision of the governor.

35 C. The programs to be used in the recount of votes pursuant to this  
36 section shall differ from the programs prescribed by section 16-445 and used  
37 in the initial tabulation of the votes.

38 D. IF THE RECOUNTED RACE RESULTS IN AN INCONSISTENT OUTCOME AND THE  
39 MARGIN OF THE RECOUNT IS WITHIN THE LIMITS PRESCRIBED IN SECTION 16-661, THE  
40 OUTCOME OF THE RACE SHALL BE DETERMINED USING ONE OF THE FOLLOWING METHODS AS  
41 SELECTED BY THE OFFICER IN CHARGE OF THE ELECTION, AFTER NOTIFYING  
42 REPRESENTATIVES OF THE POLITICAL PARTIES:

43 1. THE ELECTRONIC COUNT OF ALL BALLOTS SHALL BE REPEATED UNTIL TWO  
44 COUNTS RESULT IN CONSISTENT OUTCOMES AND THE VOTE COUNT DIFFERENCES FOR THOSE  
45 TWO COUNTS ARE WITHIN THE MARGINS PRESCRIBED IN SECTION 16-661. IF MORE THAN

1 ONE COUNTING DEVICE IS AVAILABLE, BALLOTS SHALL BE DISTRIBUTED AMONG THE  
2 DEVICES SO THAT THE BALLOTS ARE COUNTED ON DIFFERENT DEVICES FOR EACH  
3 RECOUNT. ONCE A CONSISTENT OUTCOME IS OBTAINED, THE FINAL COUNT SHALL  
4 CONSTITUTE THE OFFICIAL COUNT FOR THAT RACE.

5 2. ALL BALLOTS SHALL BE HAND COUNTED USING VOTER INTENT CRITERIA AS  
6 PRESCRIBED IN SECTION 16-602, SUBSECTION H. THE HAND COUNT SHALL CONSTITUTE  
7 THE OFFICIAL COUNT FOR THAT RACE.